

**DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA**

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IN THE MATTER OF the Investigation of the )  
Montana Public Service Commission into ) REGULATORY DIVISION  
whether Mountain Water Company's rates are )  
Just and Reasonable ) DOCKET NO. D2016.2.15  
)

**MOUNTAIN WATER COMPANY’S MOTION TO COMPEL THE PUBLIC SERVICE  
COMMISSION TO RESPOND TO DATA REQUESTS MWC-010 THROUGH MWC-018**

Pursuant to ARM 38.2.3301(1) and Mont. R. Civ. P. 37, Mountain Water Company (“Mountain Water”), through its counsel, moves to compel the Public Service Commission (“Commission”) to respond to Mountain Water’s First Set of Data Requests to the Commission (MWC-010 through MWC-018) (“Requests”). The Commission’s failure to respond violates its own administrative rules, procedural order, and Mountain Water’s right to procedural due process.

**FACTUAL AND PROCEDURAL BACKGROUND**

On July 30, 2012, Mountain Water filed an Application for Authority to Increase Rates and Charges for Water Service to its Missoula, Montana Customers. Final Order No. 7251c, Docket No. D2012.7.81 (Nov. 21, 2013). Following discovery and the filing of testimony and exhibits, the Commission held a public hearing on July 10-11, 2013. *Id.* As a result of these proceedings, the Commission set appropriate rates, finding “[t]he rates and cha[r]ges approved in this Final Order are just and reasonable.” *Id.* at 13-14.

On January 29, 2016, the Commission initiated this action to investigate the rates it set in 2012 “to determine if they are just and reasonable.” Notice of Investigation and Intervention Deadline, at 1 (Feb. 3, 2016). On March 7, 2016, the Commission issued Procedural Order No. 7475a (“Order”), which allows the service of, and requires responses to, data requests. *See* Order, ¶¶ 8-13. The Order requires parties to “respond to data requests within seven (7) calendar days of the service date of the data request or by the deadline to respond, whichever is earlier,” and allows the parties to file motions to compel, if necessary. *Id.* ¶¶ 9, 12.

On March 18, 2016, Mountain Water served the Requests on the Commission staff. As of the date of this motion, which exceeds the seven-day deadline the Commission set for responses, the Commission has not responded to the Requests.

### **ARGUMENT**

The Commission must respond to Mountain Water’s Requests. The Commission’s own administrative rules and Order require it to respond to these Requests. In addition, Mountain Water is entitled to procedural due process, which also requires the Commission respond. The Commission’s failure to file and serve timely responses is unlawful.

#### **I. THE COMMISSION’S ADMINISTRATIVE RULES AND ORDER REQUIRE IT TO RESPOND TO THE REQUESTS.**

The Commission is a party to this matter, and as such must respond to data requests. Under Montana law, “all rates . . . fixed by the [C]ommission shall be enforced and are prima facie lawful from the date of the order until changed or modified by the [C]ommission.” § 69-3-110(2), MCA. The party that wishes to challenge the existing rates must carry the burden of proof and “before such presumptions can be overcome.” *See Mountain States Tel & Tel. Co. v. Pub. Serv. Comm’n*, 135 Mont. 170, 178, 338 P.2d 1044, 1049 (1959); *Billings Util. Co. v. Pub. Serv. Comm’n*, 62 Mont. 21, 203 P. 366, 368 (1921); *see also Qwest Corp. v. Dep’t of Public*

*Serv. Regulation*, 2007 MT 350, ¶ 35, 340 Mont. 309, 174 P.3d 496. A party includes a “governmental body.” ARM 38.2.601(1)(n). The Commission’s rules clarify that staff has “the full rights and **responsibilities of parties.**” *Id.* (emphasis added).

The Commission’s administrative rules and Order require responses to data requests by all parties. ARM 38.2.3301(2) states “the exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the [C]ommission.” The Order quotes this provision and states “[p]arties must respond to data requests within seven (7) calendar days of the service date of the data request or by the deadline to respond whichever is earlier.” *Id.* ¶¶ 8-9. It also provides for parties to seek orders compelling answers to data requests, if responses are insufficient. *Id.* ¶ 12.

The Commission has made itself a party to these proceedings by initiating this docket and challenging the rates it ordered in 2012. Accordingly, it bears the burden of proof and must establish a case against Mountain Water showing clear and convincing evidence of manifest error. Pursuant to the Commission’s administrative rules and Order, Mountain Water is entitled to serve data requests to determine the basis for the Commission’s actions. Data requests are the primary method of discovery the Commission has repeatedly recognized through its rules and orders. There is no legal basis to deny Mountain Water the information it seeks. The Commission’s failure to respond to Mountain Water’s data requests within the seven-day deadline the Commission itself set violates its own rules and Order. The Commission must answer the Requests.

## **II. MOUNTAIN WATER’S DUE PROCESS RIGHTS REQUIRE THE COMMISSION RESPOND TO THE REQUESTS.**

Mountain Water is granted procedural due process rights under the Montana and federal constitutions. *Montana Power Co. v. Pub. Serv. Comm’n*, 206 Mont. 359, 364, 671 P.2d 604,

607 (1983). “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. . . . Administrative agencies are not exempt from the constitutional restraints of due process requirements. *Mont. Power Co. v. Pub. Serv. Comm’n*, 206 Mont. 359, 368, 671 P.2d 604, 609 (1983) (citations and internal quotation marks omitted).

This right requires the Commission respond to Mountain Water’s data requests. *Wilson v. Dep’t of Pub. Serv. Regulation*, 260 Mont. 167, 172, 858 P.2d 368, 371 (1993). In *Wilson*, the Montana Supreme Court held the Commission must provide responses to data requests from operators of a garbage transportation company. *Id.* There, the Commission issued a show cause order, and the operators served discovery on the Commission seeking the basis for the Commission’s actions. *Id.* at 169, 171, 858 P.2d at 369, 371. However, the Commission denied the operators’ request for discovery. *Id.* at 169, 858 P.2d at 369. The operators then sought relief from the District Court, which ordered the Commission to dismiss the matter or, among other things, “respond to the discovery requests served by the [operators].” *Id.* at 170, 858 P.2d at 370.

The Montana Supreme Court agreed with the District Court. *Id.* It held the operators “are entitled to procedural due process which includes, among other things, the ability to discover information relevant to the case against them.” *Id.* Accordingly, the Court affirmed the District Court’s order. *Id.* at 173, 858 P.2d at 372.

The standard established in *Wilson* requires that the Commission respond to the Requests in this matter. As in *Wilson*, the Commission has issued a show cause order against Mountain Water, and Mountain Water has served data requests on the Commission seeking the basis for the Commission’s actions. The Commission refused to answer, as it did in *Wilson*. Therefore, as

the Court determined in *Wilson*, the Commission has violated Mountain Water's due process rights and must respond to discovery or dismiss the matter.

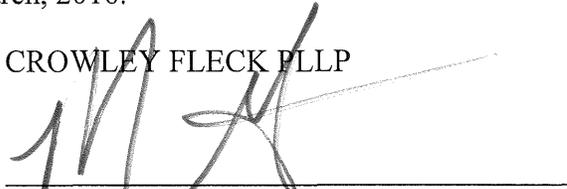
Finally, the Commission's failure to respond to the Requests strips Mountain Water of its due process right to present its case in a meaningful manner. The Commission has not identified any reason the existing rates are not just and reasonable. Its own administrative rules and Order recognize "data requests [are] the primary method of discovery in [these] proceedings." ARM 38.2.3301(2); Order, ¶ 8. If the Commission eliminates the primary method for Mountain Water to discover the facts and legal arguments against these rates, it simply cannot be heard in any meaningful way. The Commission must respond to the Requests appropriately.

**CONCLUSION**

For these reasons, the Commission must respond to Mountain Water's Requests, pursuant to its own administrative rules, Order, and Mountain Water's due process rights.

Submitted this 30<sup>th</sup> day of March, 2016.

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**CERTIFICATE OF SERVICE BY MAIL**

I hereby certify that on March 30, 2016, the foregoing was served via electronic and U.S. mail on:

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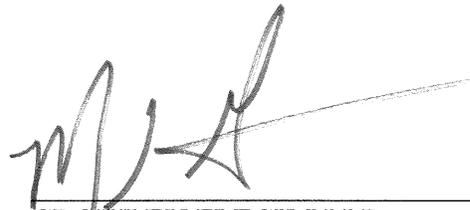
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